

**Before the New Hampshire
Office of Allied Health Professionals
Physical Therapy Governing Board
Concord, New Hampshire 03301**

In the matter of:

Wageed Girgis

License No.: 1732

(Adjudicatory/Disciplinary Proceedings)

Docket No. 07-001

DECISION AND ORDER

Before the New Hampshire Physical Therapy Governing Board is an adjudicatory proceeding involving a disciplinary action regarding Wageed Girgis, PT, the Respondent.

By the Board: Laurel Clute, PT Chairperson and Hearing Officer
 Robert Brunton, PT
 Wendy Farricy, PTA
 Veronique C. Soucy, Administrative Assistant

Appearances:

Attorney Catherine L. Bernhard for the Prosecution
Donald Vandal, Investigator
Veronique Soucy, Administrative Assistant.

The Respondent did not appear at the hearing.

BACKGROUND INFORMATION

The Respondent does not practice physical therapy in the State of New Hampshire at this time. In November 2006, the Respondent returned his license renewal application which indicated that he did not wish to renew his license. On December 31, 2006, the Respondent's New Hampshire physical therapy license lapsed. The following actions and/or allegations of misconduct occurred while the Respondent was actively licensed in this State.

The New Hampshire Board of Medicine (the predecessor licensing agency to the New Hampshire Physical Therapy Governing Board) first granted a license to practice as

a physical therapist in the State of New Hampshire to Wageed Girgis, PT on January 9, 1995. Respondent holds license number 1732.

On December 8, 1997, the Respondent and the New Hampshire Board of Medicine settled certain allegations of professional misconduct prior to a formal hearing.

Allegations included that he engaged in dishonest or unprofessional conduct, or both, to-wit: a) by stating on his New Jersey application for licensure that he was a physical therapist assistant when in fact he was not. This resulted in a New Jersey Board Order denying him licensure; b) providing false information on his New Hampshire application for licensure, to-wit: by answering in the negative the question of whether any of his licenses were revoked or canceled, when in fact he had his Indiana temporary license revoked as a result of his failing a March 3, 1993 examination. The New Hampshire Board of Medicine actions included: a 5- month suspension of the Respondent's physical therapy license and an expectation that the Respondent would make a good faith effort to ensure all reports, records and other documents or data required by the agreement be filed in a timely manner. Any breach of the conditions would lead to a separate basis for disciplinary action and sufficient grounds to issue a summary suspension order.

On October 5, 1998, an administrative complaint was filed against the Respondent's physical therapist license by the Indiana's Attorney General's Office.

On January 8, 1999, the Indiana Physical Therapy Committee (hereinafter "Indiana Committee" or "Indiana Board") placed the Respondent's license on Indefinite Probation with various terms and conditions, after finding that the Respondent violated certain rules and practice act regulations.

On or about March 6, 2003, the Respondent's Indiana physical therapy license was placed on "Indefinite Suspension" for failure to comply with the terms and conditions as set forth in the Indiana Committee's January 8, 1999 order.

On or about March 24, 2005, the Respondent's Indiana physical therapy license was reinstated on "Indefinite Probation" with various terms and conditions. Respondent was not permitted to seek withdrawal of the probationary status of his Indiana physical therapy license for a period of one (1) year.

On December 7, 2005, the Indiana Board held a hearing and found the Respondent's conduct violated sanctions imposed by the March 24, 2005 decision, in that the Respondent failed to cause his supervisor to provide quarterly reports. The February 8, 2006 Order from the Indiana Board placed the Respondent's physical therapy license on indefinite suspension for two (2) years. Prior to reinstatement, the Respondent was required to provide two (2) performance appraisals for the span of at least one (1) year prior to petitioning for reinstatement.

On or about November 16, 2005, the New Hampshire Physical Therapy Governing Board ("NH Board") received information relating to action taken by the Indiana Board against the license of Wageed Girgis, PT. The receipt of the February 8, 2006 Order of the Indiana Board initiated an informal investigation into the matter by the NH Board relating to whether the Respondent was duly licensed in both Indiana and New Hampshire and whether the Respondent committed professional misconduct pursuant to RSA 328-A:3, III; NH RSA 328-F:23,I; and RSA 541-A:30 resulting from the findings in the Indiana Board's Order.

On November 23, 2005, the NH Board referred the matter to the Administrative Prosecutions Unit ("APU") of the NH Justice Department. NH Board public member, Marjorie Brand, was named liaison and recused from the NH Board. A Report of Investigation ("ROI") dated April 4, 2007 was provided for the NH Board's review and action at the meeting of April 18, 2007. The ROI reflected difficulties with unclaimed certified mail to the Respondent's post office box in Minnesota, but mail sent by regular postal service was not returned. In its conclusion, the ROI alleged that the Indiana Board's action constituted sufficient evidence for the NH Board to make a finding that Mr. Girgis violated RSA 328-F:23, I (d), (e) and (g). This statute authorizes the NH Board to take action against a licensee whose license has been disciplined by a licensing agency or professional regulatory agency in another jurisdiction. APU recommended that the NH Board consider a Notice of Hearing. An alternative was also identified: the NH Board could hold this matter in abeyance unless and until the Respondent reapplied for licensure in New Hampshire.

On April 30, 2007, the NH Board issued a Notice of Hearing to resolve the question of whether findings had been made against the Respondent's Indiana physical therapy license by the Indiana Committee, and if so, whether those findings should affect Respondent's license to practice physical therapy in New Hampshire. The Notice of Hearing was mailed, via certified mail and via regular first class mail, to the last mailing address the Respondent provided to the NH Board.

At 1 p.m. on May 16, 2007, a hearing on the Notice of Hearing was held at the Board's office, 2 Industrial Park Drive, Concord, New Hampshire. The Respondent failed to attend, nor was the Respondent represented by counsel at the hearing.

The NH Board considered testimony and accepted into evidence Hearing Counsel Exhibits 1 through 3.

HEARING

A motion with a witness list and exhibits was filed by APU Attorney Catherine Bernhard and accepted by the NH Board.

Evidence was presented verifying the Respondent's mailing address. Evidence was provided to the NH Board that in October 2006, mail sent to the Respondent from the NH Attorney General's Office to P.O. Box 14549, Minneapolis, MN, was refused. Evidence was provided that in December 2006, the Postal Inspector in Manchester, NH verified the Respondent's mailing address as P.O. Box 14549, Minneapolis, MN. On February 13, 2007, the Respondent was contacted by telephone and verified his mailing address as the same. He denied any knowledge of mail being refused at that address.

Evidence was also presented of the NH Board of Medicine's Settlement Agreement of December 8, 1997 imposing discipline against the Respondent's New Hampshire physical therapy license.

A copy of the Indiana Committee's "Findings of Fact and Order on Order to Show Cause" issued February 8, 2006 was also placed in evidence. At that time, the Respondent was a licensed physical therapist in Indiana and in New Hampshire. The Indiana Committee found the Respondent violated his probation as ordered by the Indiana Committee on March 24, 2005. The Respondent's Indiana physical therapy license was placed on indefinite suspension commencing on February 8, 2006.

FINDINGS OF FACT

1. Wageed Girgis ("Respondent") was first granted a license to practice physical therapy in New Hampshire on January 9, 1995. The Respondent holds NH license number 1732. In November 2006, the Respondent returned his license renewal application which indicated he did not wish to renew his license. On December 31, 2006, the Respondent's New Hampshire license lapsed.
2. On April 30, 2007, the NH Board issued a Notice of Hearing to resolve the question of whether findings had been made against the Respondent's Indiana physical therapy license by the Indiana Committee for misconduct occurring while the Respondent was also licensed in New Hampshire, and if so, whether those findings should affect the Respondent's license to practice physical therapy in NH.
3. A hearing on the Notice of Hearing was held on May 16, 2007.
4. The Notice of Hearing and a copy of the Report of Investigation were sent to the Respondent at the last address he had provided to the NH Board: P.O. Box 14549, Minneapolis, MN. This correspondence was sent by certified mail and regular postal service. The Respondent failed to appear at the Hearing. The NH Board heard testimony that the certified mail was returned undelivered, but that the correspondence sent by regular mail was not returned to the NH Board.
5. The NH Board has had no correspondence or communication from the Respondent since November 2006. No updated or change of address for the Respondent has been received by the NH Board.
6. At the hearing, evidence was presented verifying the Respondent's mailing address as P.O. Box 14549, Minneapolis, MN. Evidence was provided that in October 2006, mail sent to Respondent from APU at this mailing address was refused. Evidence was provided that in December 2006, the Postal Inspector in Manchester, NH verified the Respondent's mailing address as the same. On February 13, 2007, the Respondent was contacted by telephone and verified his mailing address as same. He denied any knowledge of mail being refused at that address.

7. On December 8, 1997, the New Hampshire Board of Medicine issued a Settlement Agreement imposing discipline against Respondent's New Hampshire physical therapy license. A copy of the Settlement Agreement was placed in evidence.
8. The NH Board received into evidence a copy of the Indiana Committee's "Findings of Fact and Order on Order to Show Cause" issued February 8, 2006.
9. The NH Board received evidence that on February 8, 2006, the Respondent was also a licensed physical therapist in the State of Indiana, holding license number 05003881A. The NH Board received evidence that the Indiana Physical Therapy Committee found Respondent to have violated his probation as ordered by the Indiana Committee on March 24, 2005. The NH Board heard evidence that the Indiana Physical Therapy Committee found that Respondent's conduct violated s.25-1-9-4 (10) by failing to comply with an order under Indiana Code 25-1-9-9. The NH Board heard evidence that Respondent's Indiana physical therapist license was placed on indefinite suspension commencing February 8, 2006.

RULINGS OF LAW

1. RSA 328-F:23, II (g) authorizes the NH Board to take disciplinary action against a licensee if it makes a finding that the licensee has been subjected to disciplinary action by a regulatory authority in another domestic or foreign jurisdiction. The evidence presented to the NH Board constitutes sufficient evidence to support a finding by the NH Board that a disciplinary action was taken against Respondent's Indiana physical therapy license on February 8, 2006 (see Exhibit 2).
2. RSA 328-F:24, IV (3) indicates that service shall be made on licensees by certified mail to the address on file with the NH Board. The NH Board was provide with testimony that the Administrator mailed the Notice of Hearing by certified mail and regular mail. The certified mail was returned as undeliverable to the NH Board.
3. RSA 328-F:21 indicates that licensees are required to report any change of address with the NH Board no later than thirty (30) days after the date of the change. The evidence was sufficient for the NH Board to find that the NH Board had Respondent's current mailing address.

DISCUSSION AND CONCLUSION

The NH Board determined that the Respondent has had disciplinary actions against him in New Hampshire, New Jersey and Indiana. At this time, he is in good standing with his Minnesota physical therapy license. The Minnesota Board is familiar with his history in other states; however, the Minnesota Board has no statutory or administrative authority to act against the licensee based upon another state's sanctions.

It was not part of this investigation whether Respondent correctly answered questions on the 2004 application for renewal of NH physical therapist license relative to whether he had disciplinary action against him.

The NH Board notes that according to New Hampshire statutory and administrative authority, sanctions can be placed against Respondent's New Hampshire physical therapy license based upon findings from Indiana's Committee.

After reviewing the exhibits and testimony, and considering the arguments of the Prosecution, the NH Board decided to adopt the recommended decision, as modified below.

THEREFORE, IT IS ORDERED, that Wageed Girgis is reprimanded.

IT IS FURTHER ORDERED, that the Respondent's license is suspended for five (5) years retroactively from to the last date the Respondent's license was active, to wit, from December 31, 2006; and

IT IS FURTHER ORDERED, that if the Respondent wishes to re-apply for licensure after five (5) years, to wit, after January 1, 2012, the NH Board will review the application and make a decision about granting a conditional license. The NH Board at this time recommends at least two (2) conditions to any future license: a) direct supervision from a licensed physical therapist for at least one (1) year, with quarterly reports submitted to the NH Board, and b) a course in ethics. Both the supervising licensee and the course must be pre-approved by the NH Board; and

IT IS FURTHER ORDERED, that pursuant to RSA 328-F:23, V, the Respondent must fully satisfy any condition contained in this order before the NH Board will consider the reinstatement of a physical therapy license to the Respondent; and

IT IS FURTHER ORDERED, that a fine of \$1,000 be issued to Respondent to be paid in full on or before September 15, 2007, payable to 'Treasury, State of New

Hampshire,' and mailed to the New Hampshire Physical Therapy Governing Board, 2 Industrial Park Drive, Concord, New Hampshire, 03301; and

IT IS FURTHER ORDERED, that a copy of this order shall be mailed to the last home address provided by the Respondent via certified mail, return receipt requested, and by regular first class mail; and

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file and that the New Hampshire Physical Therapy Governing Board and the New Hampshire Office of Allied Health Professionals shall maintain this Order as a public document, including but not limited to reporting the NH Board's actions taken herein to the Healthcare Integrity and Protection Data Bank ("HIP-DB"), to the Federation of State Boards of Physical Therapy (PSBPT), and to any state regulatory physical therapy licensing board in which Respondent currently holds or has ever held a license.

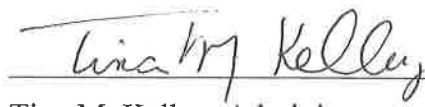
IT IS FURTHER ORDERED, that the burden of proof for establishing compliance with this order shall be on the Respondent. The Respondent shall bear all costs of payment and reporting required by this order, but she shall be permitted to share costs with third parties.

IT IS FURTHER ORDERED, that the Respondent's failure to comply with any terms or conditions imposed by this order shall constitute unprofessional misconduct pursuant to RSA 328-F:23, II, and a separate and sufficient basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED, that this order shall take effect as an order of the New Hampshire Board on the date an authorized representative of the New Hampshire Board signs it.

BY ORDER OF THE BOARD

Date: August 16, 2007


Tina M. Kelley, Administrator
Authorized Representative of the Board